



Asset Division In Divorces: Not Always a 50/50 Deal

Splitting spouses have right to keep pre-marriage property

By **WALTER C. KING II**

Divorcing husbands and wives are frequently surprised when the division of their assets is not at all what they initially visualized. Forensic accountants frequently work with clients on the concepts of asset division, and there are a number of important questions they are often asked by the parties involved. The answers to these questions can provide a good amount of help in many of these situations.

In equitable distribution states such as Connecticut, marital property is divided in an “equitable fashion.” Although 41 states have adopted equitable distribution laws, each state has its own interpretation based on state case law. “Equitable” does not necessarily mean “equal,” but simply means dividing the assets in an equitable fashion based on the merits of a particular case.

One reason for disparate asset division in a divorce is the concept of “separate property.” Some frequent examples of separate property are property owned by spouses upon inception of the marriage, inherited and gifted property, personal injury awards and pensions.

To illustrate a disparate asset division, let’s use as an example a case of a couple married in 1995 and seeking dissolution of marriage in 2010. Both spouses were previously married. The assets of the couple at the date of marital dissolution include inherited property, pension assets and a closely held business owned by the wife.

Inherited property: In this case, the husband inherited \$500,000 in 2005 and the money was kept in his separate

name. By 2010, the \$500,000 has grown to \$700,000. The general rule is that \$500,000 is considered to be “separate property” and would be allocated to the husband as such. The increase of \$200,000 is deemed to be marital property and is divided among the couple.

There are many possible variations of this example, such as the following: (1) A portion of the property is used to buy a residence for the couple which is held in joint name; (2) The inherited property is deposited in a joint bank account. Forensic accountants are used to examine records such as tax returns, brokerage statements and bank accounts, and employ tracing procedures to help determine the amount of separate and marital property held in joint names.

Pension assets: In this case, the husband has worked for a large company since 1990 (five years before the marriage) and has earned significant pension assets. That pension has been earned for over 20 years, and his marriage with his wife has been 15 years. Formulas are used by forensic accountants to allocate the total pension to the “separate property” component before the marriage and to the marital property portion earned during the marriage.

Closely held business: In this case, as previously stated, the wife owns a successful closely held business which she started in 1990, five years before the marriage. The general concept followed in equitable distribution is that the increase in value during the marriage (from 1995 to 2010) is considered “marital property,” while value

at time of marriage in 1995 is deemed to be “separate property.” Therefore, a valuation of the business at marriage inception and again at dissolution is often required.

It is also important to keep in mind that judges will usually not divide the actual ownership of closely held businesses between spouses, but rather will award an asset of equal value to the non-owner spouse.

Court decides: In the end, asset division for the divorcing couple is decided by the court. The court will consider such factors as length of marriage, ages and number of children and the conduct of the parties. As



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an example, if one spouse has been hiding assets in secret bank accounts, it may impact the allocation of assets by the judge.

Furthermore, second marriages and marriages later in life often use agreements at the inception of marriage to specify the fair market value of each spouse's assets upon inception of the marriage. This is especially critical for assets that are difficult to value, such as closely held businesses, copyrights and patents.

Conclusion: The easier thing to do would seemingly be to give a simple and finite formula that would apply to all asset division cases. However, the number of variables introduced in the above case study makes such a formula impossible. Those variables include the separate property concept, state interpretation and, finally, the trial court's



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broad allocative powers. And of course, many more variables are possible.

The complexities outlined in the above fictitious case indeed illuminate the financial complexities that often come in instances of divorce. However, by engaging in

a detailed forensic examination of the case, it can lead to a much more thorough and beneficial settlement, and can provide these divorcing couples with much-needed support in making their way through this often difficult maze. ■